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18N2/0903

EXAMINER

ACHUTAMURTHY, P

ART UNIT

PAPER NUMBER

1818

DATE MAILED: 09/03/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/611,804

Applicant(s)
Wohlstadter et al

Examiner
P. Achutamurthy

Group Art Unit
1818



☒ Responsive to communication(s) filed on May 27, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-79 is/are pending in the application.

Of the above, claim(s) 40, 41, 50-60, and 67-77 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-39, 42-49, 61-66, 78, and 79 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

The election of Group I, claims 1-39, and 66 with traverse in paper No. 6 (response May 22, 1997) is acknowledged. In deference to applicants arguments, the restriction requirement has been reconsidered. Claims drawn to apparatus, system, cassette, article are now combined to be regarded as one single inventive concept, all claims being essentially drawn to apparatus embodiments. Accordingly Groups I, III, IV, VII, and VIII have been now treated to as group I and this is taken to be the elected Group. Accordingly claims 1-39, 42-49, 61-65, 66, 78, and 79 are examined on the merits. Claims 40, 41, 50-60, and 67-77 are withdrawn as being drawn to non-elected inventions. Applicants arguments traversing the restriction of these claims has ben fully considered but are not persuasive because these claims are drawn to multiple methods of use and biding domains which are distinct from the elected claims.

Claim Rejections - 35 USC § 102/103

Rejection A

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Evaluations of the level of ordinary skill in the art requires consideration of such factors as various prior art approaches, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of those actively working in the field, commercial success, and failure of others.

The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The evidence of record including the references and/or the admissions are considered to reasonably reflect this level of skill.

Claims 1-39, 42-49, 61-65, 66, 78, and 79 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shibue et al (US pat. 5,240,863) or Leventis et al (US pat. 5,093,268).

Shibue et al teach detecting an immunoreactant in a sample by mixing the liquid sample with a complementary immunoreactant which is immobilized on a carrier (reading on the

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expression 'domains supported on a carrier) and measuring the analyte via electrochemiluminescence (ECL) determination. The ECL is triggered by means of electrodes placed between the mixture of the liquid sample and the supported binding immunoreactant. An apparatus having an electrode, a counter electrode, and a reference electrode is also disclosed. See the entire reference in general but particularly the following locations: abstract, col. 2, line 61 to col. 6, line 4, Figure 1, and column 6, lines 36-68..

Leventis et al teach an apparatus for conducting two or more simultaneous measurements of the ECL phenomena wherein two or more light detectors such as photomultipliers receive the emitted light at respective wavelengths of analytes of interest in the sample. The reference clearly teaches an apparatus for conducting a plurality of measurements of the ECL phenomena. See the entire reference in general but particularly the following locations; col. 4, line 11 to column 10, line 60, column 8, lines 30 to column 10, line

Alternatively, the references arguably differ from the instant claims inasmuch as they do not disclose, an apparatus, system, article, cassette, or a kit as called for in the instant claims. However, it would have been one having ordinary skill in the art at the time of invention to have adopted the method and apparatus embodiments taught by the references and obtain suitable apparatus, system, kit or cassette, because such articles for conducting fluorescence or other physicochemical measurements are well known and conventional in the art.

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It is recognized that the main features of the claims are that binding domains which bind the analyte of interest and the electrodes which are used to provide the electrical impulses (the waveforms) are provide on provide on a second support surface. However since the electrodes are mounted on plates in the references (which are solid supports for the electrodes) and the electrodes have to brought onto contact with the sample in order to cause the ECL, it would appear that the embodiments of the claims represent an obvious choice of electrode disposition in the apparatus for determining the ECL arising from the sample labelled with the eletrochemiluminescent ligands.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Achutamurthy whose telephone number is (703) 308-3804. The examiner can normally be reached on Monday-Thursday from 7:00 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald E. Adams, Ph.D., can be reached on (703) 308-0570. The fax phone number for this Group is (703) 305-7939.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



PONNATHAPURA ACHUTAMURTHY
PRIMARY EXAMINER
GROUP 1800

pa
September 2, 1997